

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE LOKOJA JUDICIAL DIVISION
HOLDEN AT LOKOJA
ON MONDAY, THE 14TH DAY OF DECEMBER, 2015
BEFORE HIS LORSHIP, HON. JUSTICE PHOEBE M. AYUA
JUDGE

CHARGE NO: FHC/LKJ/63C/2015

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA	-----	COMPLAINANT
AND		
1. SHEIDU RAJI	}	
2. HASSAN BELLO		-----

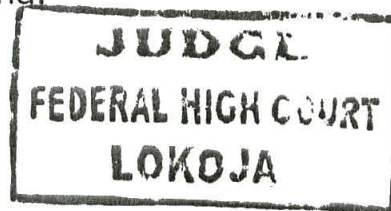
JUDGEMENT

This is a Judgement on a three-count charge preferred against the 1st and 2nd Defendants, herein, whereby the two Defendants pleaded guilty to the charge upon their arraignment on the 29/10/2015.

The charge, dated the 21st day of August, 2015, was filed on the same date. The charge was signed by G.O. Otowu, Esq. Officer-in-charge Legal and Prosecution, Kogi State Command.

The charge reads as follows:

COUNT I



That you Sheidu Raji, male, Adult, Hassan Bello, Male, 60 years on 31/7/2015 at Arema Farm settlement via Ogale in Ijumu Local



Government Area of Kogi State within the jurisdiction of this Honourable Court did conspire to commit an offence to wit: illegally (sic: illegal) possession of firearms punishable under section 516 of the Criminal Code Act.

COUNT II

That you Sheidu Raji, Male, Adult, Hassan Bello, Male, 60 years on 31st July, 2015 at Arema Farm settlement via Ogale in Ijumu Local Government Area of Kogi State within the jurisdiction of this Honourable Court illegally had in your possession one single barrel gun, and thereby committed an offence contrary to section 4 and punishable under section 27(1)(b)(i) of the Firearms Act, CAP. F28, Laws of the Federation of Nigeria, 2004.

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COUNT III

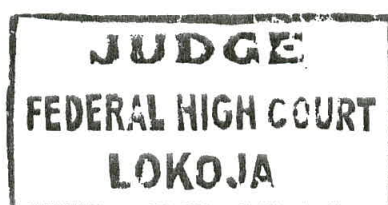
That you Sheidu Raji, Male, Adult, Hassan Bello, Male, 60 years, on 31st July, 2015 at Arema Farm settlement via Ogale in Ijumu Local Government Area of Kogi State within the jurisdiction of this Honourable Court illegally had in your possession two Dane guns and thereby committed an offence contrary to section 5 and punishable



under section 27(1)(c)(ii) of the Firearms Act, CAP. F28, Laws of the Federation of Nigeria, 2004.

On the 29/10/2015, the 1st and 2nd Defendants were arraigned before this Court and the three-Count charge was read over to them in English language and each count of the charge was interpreted and explained to the Defendants in Ebirá language. Each Defendant said he understood the charge and each pleaded guilty to each of the three counts of the charge.

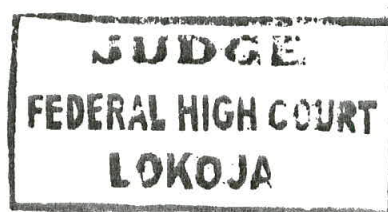
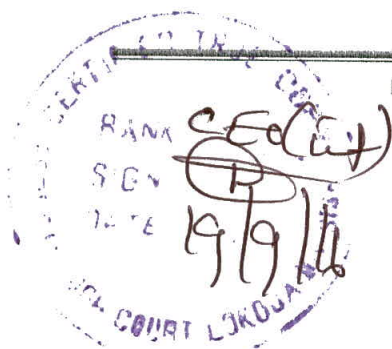
This charge was adjourned for a review of the facts of the case against the Defendants by the Prosecution. On the next adjourned date, being the 08/12/2015, the Prosecution called its lone Prosecution witness, PW1 Inspector Sunday Ibrahim. Precious Ajagun, Court Clerk was the interpreter from English language to Ebirá language and vice versa. She had affirmed to interpret the proceedings, truthfully. PW1 said he is of the Nigeria Police Force, attached to the State Criminal Investigation and Intelligence Department (CIID), Lokoja, Kogi State Police Command. That he is in the Anti-kidnapping Unit of the State Criminal Investigation and Intelligence Department (CIID), Lokoja as an investigator. He gave his force number as AP NO. 116551. PW1 testified that he knew the Defendants for the 1st time on the 29/07/2015, when he was on duty at



the State Criminal Investigation and Intelligence Department, Lokoja and a case of criminal conspiracy and kidnapping was transferred from Iyara Division. That the case was referred to the Anti-kidnapping unit for investigation. That during interrogation of the suspects, one of the suspects named Sheidu had a single barrel gun and it was recovered from him. That one cartridge and one dane gun were recovered from the said Sheidu who disclosed that he bought the gun from the 1st Defendant, Sheidu Raji and that he used to buy cartridges from the 2nd Defendant, Hassan Bello.

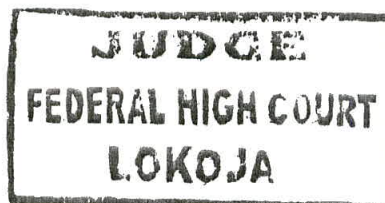
PW1 further testified that the suspect, Sheidu, then, led the Team of Police Investigators to the Defendants. That during the arrest, the Team recovered a single barrel gun and one dane gun from the possession of the 1st Defendant, Sheidu Raji. That during the arrest of the 2nd Defendant, one dane gun was recovered in his possession.

PW1 stated that the Defendants were then brought to the state Criminal Intelligence and Intelligence Department, Lokoja. That on the 31/7/2015, the PW1 recorded the caution statement of the 1st Defendant in English language even though the 1st Defendant volunteered his statement in Ebira language. PW1 stated that he is also of the Ebira tribe and that he

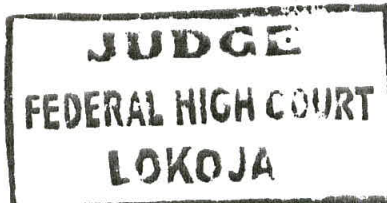


understands Ebira language, hence the recording of the 1st Defendant's statement in Ebira language. PW1 stated that before recording the statement of the PW1, he administered the word of caution to him in English language. That he interpreted the caution in Ebira language. The 1st Defendant admitted that he understood the caution. He then thumbprinted the caution. That the PW1 then volunteered his statement in Ebira language and the PW1 recorded it in English language. PW1 stated that he read the statement over to the PW1 and interpreted it in Ebira language. The 1st Defendant said he understood the statement to be his true statement. The 1st Defendant then thumbprinted the statement. PW1 said he signed the statement as the recorded. PW1 testified that he could identify the statement of the 1st Defendant by his handwriting and signature because he was the one that recorded it.

PW1 also told the Court that his Team mate, Cpl. Isah Isiaka, also an Ebira man by tribe recorded the statement of the 2nd Defendant. That Cpl. Isah Isiaka recorded the statement of the 2nd Defendant in English language even though the 2nd Defendant volunteered the statement in Ebira language. PW1 stated that Cpl. Isah Isiaka was taking the statement of the 2nd Defendant at the same time as he, PW1, was recording the



statement of the 1st Defendant. That Cpl. Isiah Isiaka also administered the word of caution to the 2nd Defendant and interpreted and explained it in Ebira language. That the 2nd Defendant said he understood the word of caution as interpreted and explained to him. He then thumbprinted it. That the 2nd Defendant then volunteered his statement in Ebira language and the Cpl. Isah Isiaka recorded it in English language being that Cpl. Isah Isiaka also understands Ebira language very well. That Cpl. Isah Isiaka then read over the statement of the 2nd Defendant to him and interpreted it in Ebira language. That the 2nd Defendant accepted it as his true statement and thumbprinted it. That Cpl. Isah Isiaka also signed the 2nd Defendant's statement as the recorder. PW1 testified that Cpl. Isah isiaka has been working with him, PW1, for the past two years and that he knows his handwriting and signature. He said Cpl. Isah Isiaka was at the time of giving evidence, away to Bayelsa State on special duty to cover security duties there during the Bayelsa State governorship election. PW1 said he would be able to identify the 2nd Defendants statement by the handwriting and signature of Cpl. Isah Isiaka. PW1 again testified that the single barrel gun and two dane guns which were recovered from the 1st and 2nd Defendants were taken to the Exhibit keeper at the State Criminal



Investigation and Intelligence Department, Lokoja and registered with Exhibit No. CER/176/2015.

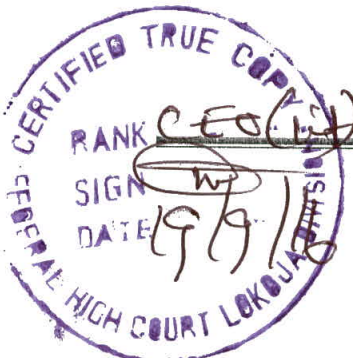
The PW1 said he would be able to identify the one single barrel gun and the two dane guns by the Exhibit number written on each of them as CER/176/2015.

The PW1 was shown the three guns and he identified them by the Exhibit number. The PW1 also identified the 1st Defendant's caution statement as well as the 2nd Defendant's caution statement.

The three guns and two statements were tendered in evidence. The Defence did not object to their admissibility. The guns and statements were admitted in evidence by the Court and marked, as follows:

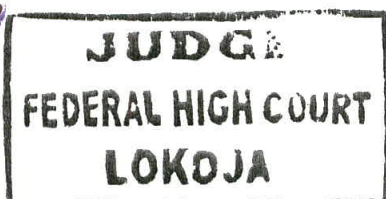
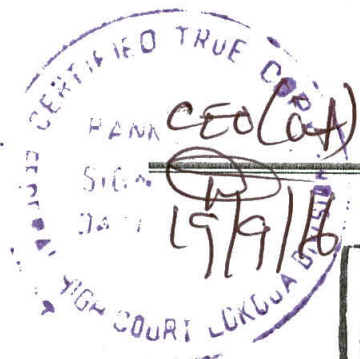
1. The one single barrel gun and two dane guns bearing Exhibit No. CER/196/2015, were marked collectively as Exhibit P1.
2. The 1st Defendant's statement was marked as Exhibit P2, and
3. The 2nd Defendant's statement was marked as Exhibit P3.

PW1 concluded his testimony by stating that at the conclusion of the investigation into this case, the case file was submitted to the Legal Unit of the state Criminal Investigation and Intelligence Department, Lokoja.



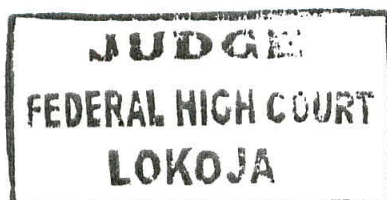
Learned Counsel for the 1st Defendant, G.O. Isa, Esq. asked the PW1 two questions under cross-examination. PW1 answered that it is true that the 1st Defendant in his caution statement, Exhibit P2, said that he, 1st Defendant, used the one dane gun and one single barrel gun recovered from him on the date of his arrest, for hunting. PW1 also stated in answer to question put to him by the 1st Defendant's Counsel that he did not recover any bullet from the 1st Defendant. In similar vein, the 2nd Defendant's Counsel, M.J. Ohieku, Esq. put two questions to the PW1 in cross examination. The PW1 answered that it was correct that he, PW1, noted that the 2nd Defendant stated in his statement, Exhibit P3, that he was using the dane gun recovered from him for hunting. PW1 also stated that he did not recover any bullet from the 2nd Defendant. PW1 also answered that he knew that the 2nd Defendant had been detained after his arrest but that he could not tell the length of period the 2nd Defendant was being detained.

The Prosecution said he did not have any question for the PW1 in re-examination. He applied for the PW1 to be discharged from the witness box. His application was granted and PW1 was discharged accordingly.



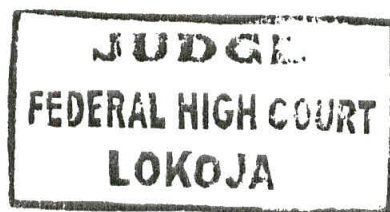
At this juncture, the Prosecuting Counsel, Otowu, G.O. Esq. applied that the 1st and 2nd Defendants be convicted based on their plea of guilty and on the evidence placed before this Court by the Prosecution to support the plea of guilty via the testimony of PW1 and Exhibits P1, P2 and P3. In this case, it is clear from the evidence of PW1 that the 1st and 2nd Defendants were arraigned before this Court on the 29/10/2015 on a three-count charge. The Count I, Count II and Count III of the charge were read over to the Defendants and the same were interpreted and explained to each of them in Epira language. They agreed that they understood the charge and each of them, 1st and 2nd Defendants, pleaded guilty to Count I, Count II, and Count III of the charge, respectively.

On the 8/12/2015, the Prosecution called its PW1 to the witness box and he, Inspector Ibrahim Sunday presented the facts of the case against the Defendants, on oath. He testified that following information obtained from a suspect in a case of kidnapping the names of the 1st and 2nd Defendants were mentioned. That the Police, including the PW1 went to Arema Farm settlement via Ogale in Ijumu Local Government Area of Kogi State and arrested the 1st and 2nd Defendants. That one single barrel gun and one dane gun were recovered from the possession of the 1st



Defendant while one dane gun, only, was recovered from the possession of the 2nd Defendant. The Defendants and the guns recovered from them were taken to the State Criminal Investigation and Intelligence Department, Lokoja, for discreet investigation. At the State Criminal Investigation and Intelligence Department, Lokoja, on the 31/7/15, the caution statements of the 1st and 2nd Defendants were recorded by PW1 and one Cpl. Isah Isiaka, respectively. The Prosecution tendered in evidence, the single barrel gun, the two dane guns and the 1st and 2nd Defendant's statements in evidence. There was no objection from the Defence. The one single barrel gun and the two dane guns were admitted in evidence and marked as Exhibit P1, collectively. Similarly, the 1st Defendant's statement was admitted and marked as Exhibit P2 while the 2nd Defendant's statement was admitted and marked as Exhibit P3.

The procedure adopted by the Court in the arraignment of the Defendants before the Court for their plea to be taken is quite in consonance with the requirements of section 271 of the Administration of Criminal Justice Act (ACJA), 2015. The presentation of the facts of the case before the Court upon the plea of guilty entered by the 1st and 2nd Defendants, respectively, also satisfies the requirement of section 274 of

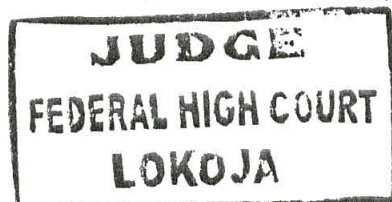


the Administration of Criminal Justice Act, 2015. The relevant sections of the Administration of Criminal Justice Act, 2015 enact as follows:

Section 271(1)

Before a defendant takes his plea, the Court shall inform him of his rights under the provisions of section 269 of this Act. (Section 269 is basically about putting the Defendant in the dock and informing him of his right to either stand or sit in the dock while his trial is ongoing).

- (2) The Defendant to be tried on a charge or information shall be:
 - (a) brought before the Court unfettered until the Court sees cause otherwise to order, and the charge or information shall be read over to him to the satisfaction of the Court by the registrar or other officer of the Court, and
 - (b) called upon to plead instantly unless, where the person is entitled to service of the information he objects to the non-service and where the Court finds that he has not been duly served.

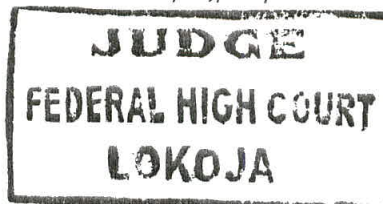
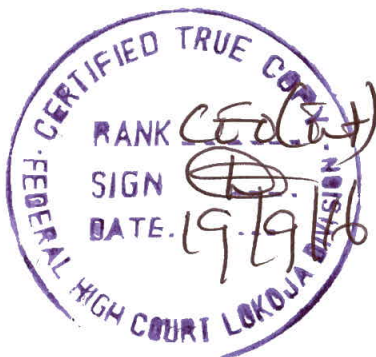


- (3) The Court shall record the fact that it is satisfied that the Defendant understands the charge or information read over and explained to him in the language he understands, and shall record the plea of the defendant to the charge or information as nearly as possible in the words used by him.

Section 274(1):

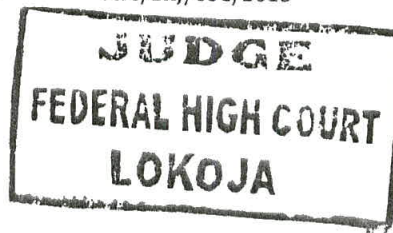
Where a defendant pleads guilty to an offence with which he is charged, the Court shall:

- (a) Record his plea as nearly as possible;
- (b) invite the Prosecution to state the fact of the case
- (c) enquire from the defendant whether his plea of guilty is to the fact as stated by the Prosecution
- (2) Where the Court is satisfied that the defendant intends to admit the truth of all the essential elements of the offence for which he has pleaded guilty, the Court shall convict and sentence him or make such order as may be necessary unless there shall appear sufficient reason to the contrary.



(3) Where the defendant pleads guilty to a capital offence, a plea of not guilty shall be recorded for him.

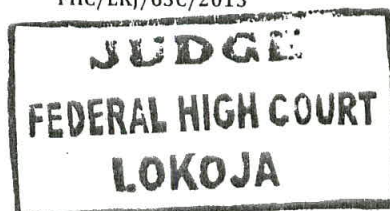
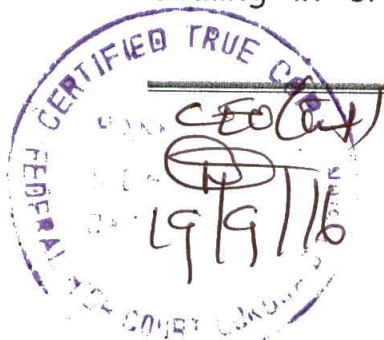
In the present case, the 1st and 2nd Defendants pleaded guilty to the three-count charge. The Count one of the charge is that the 1st and 2nd Defendant's conspired to commit a criminal offence, to wit: illegal possession of firearms. The essential element of conspiracy is agreement between two or more persons to do a thing and under Section 516 of the Criminal Code, it connotes an agreement to do an illegal thing or to do a legal thing by illegal means. In this case, I find that the 1st and 2nd Defendants agreed to possess the single barrel gun and the two dane guns illegally, having no licence for possessing the three guns. By pleading guilty to Count II and Count III of the charge, the Court is satisfied that the Defendants intended to admit the commission of the crime, that the 1st Defendant was found in possession of the single barrel gun and one dane gun while the 2nd Defendant was arrested with one dane gun. That the single barrel gun and two dane guns fall within the definition of firearms as envisaged under the Firearms Act, Cap. F28 Laws of the Federation of Nigeria, 2015. That the 1st and 2nd Defendants had no licence authorizing them to possess the guns, Exhibit P1.



In the case of NWOSU v. STATE (2004) 15 NWLR (PT. 579) 466 at 489, the Court held that there can be no greater evidence in proof of the Defendant's guilt than his own admission of guilt before the Court by his plea of "guilty" after the charge has been read over and explained to him in the language he understands.

In the instant case the 1st and 2nd Defendants promptly, pleaded guilty to Count I, Count II and Count II of the charge read over to them and interpreted and explained to them in Epira language.

Furthermore, in Exhibit P2, the caution statement of the 1st Defendant dated the 31/7/15 he stated that the single barrel gun and one dane gun belong to him. That he bought them from one Suberu Odankami who is now late. That he was using them for hunting but that due to his wife's sickness for one year and seven months, he was not going hunting again. That he is basically a farmer. That he does not have a licence for the guns recovered from him. In similar vein, the 2nd Defendant in Exhibit P3, his statement dated the 31/7/15, stated that he possessed a dane gun, Exhibit P1 and was using it for hunting. That he never had any Cartridge gun and that he is basically a farmer. That he never involved himself in dealing in or selling Cartridges to the public. He admitted that he

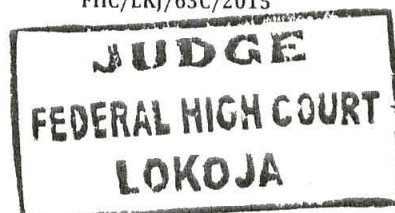


possessed the dane gun which was recovered from him but that he has no licence authorizing him to possess the gun.

In the case of DELE v. STATE (2011). 1 NWLR (PT. 1229) 508, it was held that the Court can rely on the extra-judicial confessional statement of a Defendant which is direct and positive and properly proved to be voluntary, stating that the Defendant committed the offence with which he is charged to Convict the Defendant. In the statements of 1st and 2nd Defendants, each of them confessed to being in possession of the firearms recovered from them and that they have no licence authorizing them to possess the guns. See also the case of SOLOLA v. STATE (2005) 11 NWLR (PT. 937) 460 SC and ALARAPE v. THE STATE (2001) FWLR (PT. 41) 1872 SC.

The Prosecution, through PW1, gave the facts of the case showing how the 1st and 2nd Defendants were arrested and found to be in possession of the guns without licence. This evidence corroborates the plea of guilty and content of the confessional statements.

In the case of DIBIE v. STATE (2007) 9 NWLR (PT. 1038) 30, the Supreme Court held that even though the Court can convict a defendant on the basis of his confessional statement which is direct and positive and



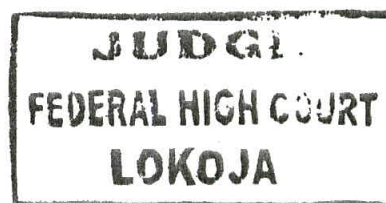
properly proved as to the Defendant's admission of guilt of commission of the offence(s) charged, it is desirable for the Prosecution to adduce some evidence outside of the confession which would make it probable that the defendant's confession is true.

This Court is therefore, no doubt, satisfied that the 1st and 2nd Defendants committed the offences with which they are charged in Count I, Count II and Count III of the charge. I hereby find the 1st and 2nd Defendants guilty of the offences as charged. Accordingly, I convict the 1st and 2nd Defendants of the said offences in Count I, Count II and Count III, respectively.

ALLOCATION:

The Learned Counsel for the 1st Convict G.O. Isah, Esq. submitted that he had the mandate of the 1st Convict to plead on his behalf. He urged the Court to be lenient in sentencing the 1st Convict for the following reasons:

1. That the Convict is an aged person of 72 years and the breadwinner of his family
2. That the 1st Convict did not waste the precious time of the Court by pleading guilty to all the offences alleged against him.



3. That the 1st Convict is a first offender and has no record of previous conviction.

4. That the 1st Convict spent two months in Police custody before he was admitted to bail.

Learned Counsel then submitted that it was against the background of the above stated factors that they would urge the Court to pass sentence of a minimum fine on the Convict. Learned Counsel commended to the Court, the provisions of Section 416(2)(a)(b)(c)(d) and (k) of the Administration of Criminal Justice Act, 2015.

On his part, Learned Counsel for the 2nd Convict, M.J. Ohieku, Esq. submitted that he would humbly adopt the submission of the Learned Counsel for the 1st Convict, especially as those submissions are applicable to the 2nd Convict, to the extent relevant. He submitted that although the 2nd Convict is not up to 72 years old, he is equally elderly. He urged this Court to be lenient in passing sentence on the 2nd Convict. He pleaded that the 2nd Convict had spent over three months in detention, cumulatively. That the 2nd Convict is married with children and he is the sole bread winner of his family and merely a peasant farmer. Learned Counsel urged this Court to pass a minimum sentence of fine on the 2nd

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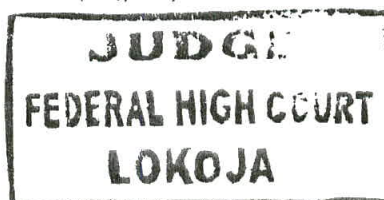
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Convict as further incarnation of the 2nd Convict will definitely have adverse effect on the living conditions of the 2nd Convict's family.

SENTENCING

Before I pronounce sentence on the Convicts, I want to state that I have listened to the passionate appeal of their Counsel to be lenient to the Convicts. This Court has therefore taken into consideration the fact of the advanced ages of the 1st and 2nd Convicts. The 1st and 2nd Convicts looked frail while standing in the dock. The 1st and 2nd Convicts are said to be first offenders and there is no record of their previous conviction before this Court. The 1st and 2nd Convicts are peasant farmers. They have their families to cater for, each being a bread winner of his family. It is also noted by this Court that the Convicts promptly pleaded guilty to the charge when read over and interpreted and explained to their understanding in Ebirra language. The 1st Defendant is said to have stayed in detention at the Police cell for two months before he was admitted to administrative bail, while the 2nd Convict has stayed in detention, cumulatively for five months since his arrest.

In the light of the foregoing considerations and when put in juxtaposition with the provisions of Section 416(1)(2)(d)(e) and (k) of the



Administration of Criminal Justice Act, 2015, this Court is inclined to temper justice with mercy in passing sentence on the convicts.

Now section 416 provides as follows:

Section 416 (1) On conviction, a Court may sentence the convict to a term of imprisonment as prescribed by the law.

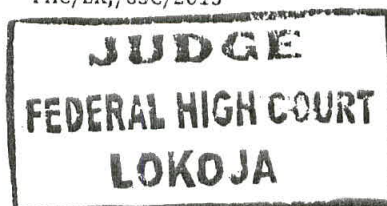
(2) In exercising its discretion of sentencing or review of sentence, the Court shall take into consideration the following factors; in addition to the provisions of section 401 of this Act:

(a) each case should be treated on its own merit;

(b) the objectives of sentencing, including the principles of reformation, should be borne in mind in sentencing a convict;

(c) an appeal court may in a proper case reduce the sentence imposed by the trial court, especially where it is excessive or based on wrong principles; or an appeal court may increase the sentence imposed by the trial court especially where it is inadequate;

(f) trial court shall conduct an inquiry into the convict's antecedents before sentencing;



(g) it may be desirable to adjourn for sentencing in order to have time to consider any evidence adduced at the sentencing hearing in accordance with section 311 of this Act;

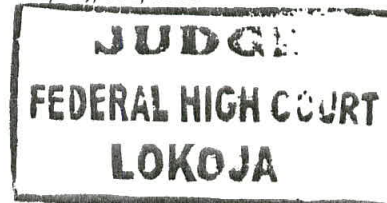
(h) where there is doubt as to whether the defendant or convict has attained the age of eighteen, the court should resolve the doubt in his favour;

(i) a defendant may not be given consecutive sentences for two or more offences committed in the same transaction;

(j) an appeal court may not increase the sentence of a lower court beyond the maximum number of years the lower court has power to impose; and

(k) sentencing to a term of imprisonment shall apply only to those offenders who should be isolated from society and with whom other forms of punishment have failed or is (sic: are) likely to fail.

In the instant case, the Convicts are confirmed to be first offenders. See Section 416(2)(d). The Convicts, especially the 2nd Convict has stayed in detention/prison custody for over 5 months. See section 416(2)(e). The Convicts are famers who stay at Arema Farm Settlement in Ijumu Local



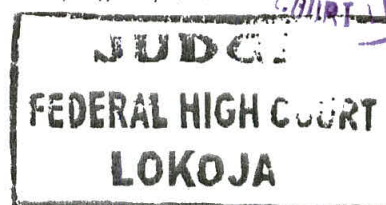
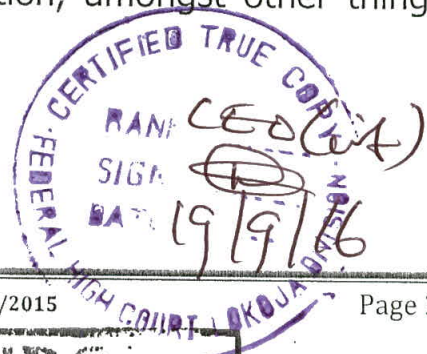
Government Area of Kogi State with their families. From their antecedents, they do not present the picture of persons who should be isolated from society, more so that it has not been shown that other forms of punishment failed or are likely to fail in respect of the Convicts. See section 416(2)(k).

Following the above analysis, therefore, it is clear that the maximum sentence prescribed for these offences with which the Convicts have been convicted in Count I, II and III of the charge, pursuant to the Firearms Act, Cap F 28, Laws of the Federation of Nigeria, 2004, will not be imposed on the Convicts. Sentence of terms of imprisonment will also not be passed on the Convicts as they are elderly and frail and do not appear to the Court as persons who should be isolated from society.

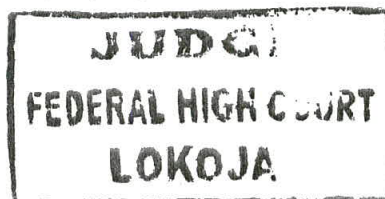
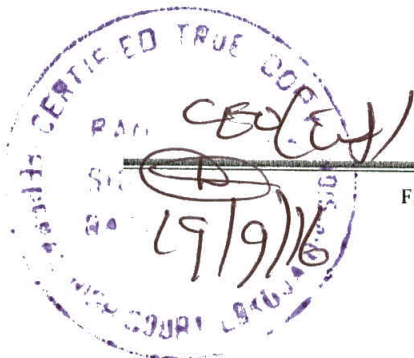
In the result, I hereby make an order sentencing the 1st and 2nd Convicts, taking into consideration also the provisions of section 427(1) of the Administration of Criminal Justice Act, 2015, which provides:

427(1) A court in fixing the amount of a fine to be imposed on a convict shall take into consideration, amongst other things, the means of the convict.

The Convicts are sentenced as follows:



1. The 1st and 2nd Convicts are sentenced to a fine of N10,000.00 (Ten thousand Naira only) each or in default of payment of the fine, a term of imprisonment for one (1) year each for the 1st and 2nd Convicts, respectively, to commence from the date of their arrest being the 31/07/2015.
2. On Count II, the 1st Convict is sentenced to a fine of N30,000.00 (Thirty Thousand Naira only) and the 2nd Convict is sentenced to a fine of N5,000.00 (Five Thousand Naira only) and in default of payment of such fine, a term of imprisonment for two years in respect of the 1st Convict and one year in respect of the 2nd Convict. The terms of imprisonment to commence from the date of arrest of the 1st and 2nd Convicts, being the 31/07/2015.
3. On Count III, the 1st and 2nd Convicts are sentenced to a fine of N20,000.00 (Twenty Thousand Naira, only) each or in default of payment of such fine, a term of imprisonment for two years each, respectively to commence from the date of their arrest being the 31/2/2015.
4. The terms of imprisonment where applicable, shall run concurrently.



Court: The Exhibit P1, the one single barrel gun and two dane guns shall be handed over to the Nigeria Police Force, through the Prosecuting Counsel, Otowu, G.O. Esq. to be destroyed, if there is no appeal against the judgement of this Court, thirty (30) days from today, being the 14/12/2015.

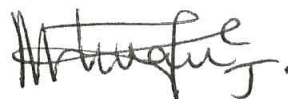
This shall be the judgement of this Court in this case.



HON. JUSTICE PHOEBE MSUEAN AYUA
JUDGE
14TH DAY OF DECEMBER, 2015

PARTIES: The 1st and 2nd Convicts are present in Court.

APPEARANCES: Otowu, G.O. Esq. for the Prosecution and A.A. Isah for the 1st Convict and M.S. Ohieku, Esq. for the 2nd Convict.



HON. JUSTICE PHOEBE MSUEAN AYUA
JUDGE
14TH DAY OF DECEMBER, 2015

